Domestic Relations

Modern American Law Lecture

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DOMESTIC RELATIONS

BY

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I.

MARRIAGE.

Marriage in some form has been recognized in every community. Among the early tribal Indians there were well-recognized rules governing the family relations. Through many centuries marriage was held to be a religious rite, and it was requisite that before the relation of husband and wife could be created there must be some sort of religious ceremony attending the celebration of the marriage.

In the sixteenth and seventeenth centuries serious opposition arose in Europe to the exclusive right of the church to celebrate marriages, it being contended that marriage should be a civil contract, and should be celebrated by certain designated civil officers. This opposition continued until, today, in nearly all of Europe, in the United States and Canada, and in certain of the South American Republics, marriage is recognized as a relationship created by civil contract. In nearly all of these countries, however, the law confers upon certain persons the authority to perform the marriage ceremony, and expressly recognizes the legality of marriages celebrated ac-

cording to the canons of the various churches, as well as of those celebrated by the civil officers of the law. The legality of a marriage is always to be determined by the law of the place where it was performed, and nearly all civilized countries recognize as valid a marriage performed according to the laws of any foreign country where the ceremony took place.

Regulation of Marriage.

Each nation has its own laws governing the conditions under which marriage may be contracted. In the United States these regulations differ widely in the various states. Under the common law, any male over the age of fourteen years and any female over the age of twelve years might marry. By statutory enactment the age requirement has been raised in the several states, and a minor cannot now be legally married without the consent of his parents or legal guardians.

Eugenic Requirements. It is also requisite, in order to create a valid marriage, that the parties possess certain qualifications, such as mental capacity sufficient to understand the meaning of the act, and that they be free from certain physical disabilities. In the last few years much emphasis has been placed upon the latter qualification. In some states it is now the law that no one afflicted with a communicable disease may be joined in marriage. Other states have forbidden the marriage of persons who are afflicted with certain incurable diseases.

The Eugenics Law of Wisconsin has probably attracted more attention in this connection than any

other. Chief Justice Winslow, speaking for the Supreme Court of that state, in the case of Peterson v. Widule, 147 N. W. 966, upheld the constitutionality of this act. The objection that the classification of men about to marry was arbitrary was met by the argument that it was a matter of common knowledge that the number of cases where newly married men transmit a venereal disease to their wives is vastly greater than the number of cases where women transmit the disease to their newly married husbands. It was held that classification was not to be condemned because there might be occasional instances in which it did not fit the situation.

Further objection was made to the act on the ground that it required the use of a very delicate and expensive blood test known as the Wasserman test. It was admitted that the requirement of this test would constitute an embargo on marriage, but it was decided that the language of the act was intended to refer to the tests recognized and used by the persons who were to make them.

Nearly every state forbids the marriage, to each other, of persons within certain degrees of blood relationship. In every state, before the marriage ceremony can be performed, a license must be duly issued by the properly constituted authority, and a marriage celebrated without such license is generally held to be voidable, although not void. The officer celebrating such a marriage, however, is generally subject to severe penalty.

In order that a valid marriage may be performed, it is necessary that the parties clearly understand

the meaning of the ceremony. If a person is married while in a state of intoxication, so that he is unable to comprehend the meaning of his act, such marriage may be annulled, and the same is true of marriages celebrated where either of the parties at the time of the marriage is under some duress, or has been induced through fraudulent representations to consent to the ceremony.

In some countries only civil marriages celebrated by the civil authorities are recognized. In others only marriages performed according to the regulations of the church are recognized. In most civilized countries, however, in calculating the total number of marriages performed, recognition is given to all marriages performed either through the church or by the civil authority.

Under the common law no ceremony at all was required to effect a legal marriage. It was necessary only for the parties to agree with each other to enter into the marriage relation, the promise to be supplemented by living together in a state of wedlock. In several states, as in Illinois, common law marriages have been abolished, and it is now requisite that a ceremony be performed by some officer designated by law to perform it. But in Illinois, until recently, common law marriages were recognized as legal and binding.

Prohibition as to Remarriage of Divorced Persons. A new restriction has recently been placed upon marriage in several states, whereby parties who have been divorced are not permitted to remarry for a period of from one to two years after such divorce. In

some states this restriction applies only to the one found to be at fault in the divorce proceeding. In other states it applies to both parties. The penalty for marrying in violation of these restrictions is usually a fine or imprisonment for a certain specified time. It is a matter of considerable doubt, however, whether these legislative restrictions accomplish the desired result.

It has been found in practice that it is almost impossible to impose the penalty which the law prescribes, where the restriction has been violated. One who has been divorced and desires to remarry within the forbidden period, generally does so by crossing the state boundary line to a state where no such restriction prevails. The question, therefore, arises whether or not, if a crime has been committed by reason of the restriction being violated, the courts of the state granting the divorce may take cognizance of such violation. If not, then neither may the laws of the state where the second marriage was performed recognize and punish the offender, for no law of that state is violated.

A practical illustration of this difficulty is shown by the case of People v. Prouty, 262 Ill. 218, 104 N. E. 387. In this case the trial judge, in awarding the decree of divorce, had granted an injunction forbidding the remarriage of the party at fault for the period of one year, as provided by statute. Prouty disobeyed the injunction by going to another state and marrying. The Supreme Court held he could not be punished for contempt of the trial court inasmuch as a court of chancery has no power to issue

an injunction to prevent the doing of a criminal act where no property right is involved. Consequently, since the injunction was issued without authority, it was a nullity, and no punishment could be meted out for violation of the order. Prior to this decision it had been the custom in Illinois to attach a similar injunction to nearly all divorce decrees, but the practice has now been abandoned as useless.

This restriction upon the right to remarry after divorce often works serious injury to one of the contracting parties. In many cases arising in the Court of Domestic Relations in Chicago, divorced persons have been remarried to others who were in no sense guilty of having violated any of the criminal laws of the state, these marriages taking place outside of the state granting the divorce. Shortly after such remarriage the wife, who is generally the innocent person, is abandoned by the man whom she supposes to be her husband. If he is arrested and brought before the court on the charge of wife abandonment he immediately pleads the statute which declares his remarriage void, and insists he is under no obligation whatsoever to support or care for his latest wife.

The tendency during the last few years is to legislate against the marriage of persons who may be under some physical or mental disability. A law became effective in England on January 1, 1913, making it a misdemeanor for anyone to marry a defective. The law does not define the meaning of the word "defective," and there is much discussion now as to whether or not the term should include habitual drunkards, idiots, and feeble-minded persons. It is

doubtful, however, whether legislation along this line will achieve the result aimed at. There is serious danger in going too far in restricting marriages.

Increase in Marriage Rate. From 1900 to 1906 there was a rapid increase in the rate of marriages for each succeeding year. The annual increase in the number of marriages in the United States for a period of twenty years prior to 1906 was about 19,000 per year, but from 1905 to 1906 the increase was 48,503. In 1890 there were in the United States but 87 marriages for every ten thousand of our population, while in 1900 there were 90 marriages for every ten thousand of population. The average number of marriages for every ten thousand in population for all of Europe in 1906 was 76, while in the United States for that year there were a little over 93 marriages for every ten thousand. The people of the United States may, therefore, be regarded as the most married of any in the world.

II.

RIGHTS OF HUSBAND AND WIFE.

Under the common law the wife was little more than the slave of her husband. She could possess neither personal nor real property. Her identity was entirely merged in that of her husband, the law presuming them to be one, so far as their dealing with each other and the public was concerned. The husband was always regarded as the head of the family with full right to direct the manner in which the family life should be conducted. He was given

the custody of the children, and had the first right to dictate and direct their care and education. His name was given to the family, and he had the right to chastise both the wife and children within certain limitations. Upon him devolved the duty of supporting the family, and he alone could determine the quality of such support.

The common law has been much modified by statute in these later years, so that today the separate identity of the wife is clearly recognized by the statutes. She may possess both personal and real property in her own name, and in some states she may buy and sell the same without consultation with or interference from her husband. In general, however, she has a dower right in all the real estate of her husband and he cannot sell or dispose of it without her consent. He likewise has a dower right in her individual property which she cannot dispose of without his consent. In many jurisdictions she has an equal right with her husband to direct the care and education of the children. In practically every jurisdiction, however, the husband is still recognized as the head of the family, having the right to choose the domicile of the family, and the wife is required, under the law, to accept his choice and to follow him to that domicile. The husband no longer has the right to chastise the wife, but is required to support her and the children in a manner compatible with his earnings and financial standing in the community.

Under the common law, all the earnings of wife and children belonged to the husband, and he could dispose of his wife's earnings without consulting her.

If the wife and husband occupied property jointly, the presumption of law was that the property belonged to the husband rather than to the wife. By statute it is now provided that husband and wife may enter into ante-nuptial agreements, which shall be legal and binding upon both parties, and by which each party to the agreement may surrender any right or interest which he has in the property of the other. Under the common law, so completely was the husband in control of all the property accumulated by the family, that even the personal adornments of the wife belonged to the husband and she could not dispose of them without his consent. He, however, had no right to bequeath the same by will, but upon his death such property became the sole possession of his wife.

Under the common law, the wife could never appear against her husband in any judicial proceeding. She still may not testify against him except in actions for divorce, for separate maintenance, or where he has committed some act of personal violence against her.

Family Necessities.

Under the common law, the husband was bound always to support the family. To assist him, however, to secure proper support, he had the right to insist that his wife and all the children who were capable of earning anything should work. But gradually many restrictive laws were passed, forbidding the children to work at certain employments or until they had arrived at a certain age. The right of the wife to possess her own earnings was recognized, and

she was jointly with her husband bound to the support of the family. To that end statutes were passed, making both husband and wife liable for all articles purchased, which were necessary to the general support and care of the family. This obligation is a continuous one and affects both husband and wife in whatever condition they may find themselves. If they are in prison or are insane or are otherwise incapacitated, the obligation still rests upon them to contribute whatever is in their power, to the support of the other members of the family. This support may extend outside the children of the family and include the parents of the husband and wife.

What Constitutes a Family Necessity. Much confusion has arisen, in interpreting these statutes, as to what should be regarded as family necessities. In nearly all jurisdictions it is recognized that proper medical services, food, clothing and household furniture are to be regarded as necessities. In some jurisdictions legal services are to be regarded as family necessities. In other jurisdictions articles of adornment, both for the person and for the home, that do not directly contribute to the nourishment of the family, may be regarded as necessities for which both the husband and wife will be liable. In some states a horse and buggy used in the business of the husband is held to be a necessity. In other cases diamond rings and other valuable articles of adornment are held to come within the rule of necessities. What is to be regarded as a family necessity, depends somewhat upon the immediate circumstances, and can only be determined by the social and

financial condition of the parties at the time such purchases are made. While a husband is bound always to the support of his wife and children, he is not always bound to the support of the children of his wife by a former marriage.

One who sells to the family with the purpose of holding such family to the payment, on the ground that the purchases were necessary to its support, should first ascertain whether or not the husband and wife are living together at the time of the sale. If they are living apart through the fault of the wife, articles purchased by her without the express knowledge or consent of the husband will not be regarded as necessities for which he may be made liable. If, however, they are living apart through the fault of the husband, and because of his abandonment or cruelty, he will still remain liable, notwithstanding they were purchased without his knowledge or consent. If they are living apart by mutual consent, and articles of family necessity are furnished to the wife, both husband and wife will generally be held liable for the payment of the value of such articles. If a husband is living apart from his wife and he desires to be relieved from the obligation of purchases made by her in the name of the family, he should give notice to the parties selling such articles, that he will not be responsible for such obligations incurred by his wife. To make such a notice effective it must be in writing and must be personal. The usual notice inserted in newspapers will generally not avail to relieve the husband from obligations of this character.

Contracts Between Husband and Wife.

At common law all contracts made between husband and wife were void on the theory that they, being one person, could not enter into a valid contract. In later years, however, the right of the husband and wife to make contracts between themselves affecting the personal property of each of them has been well established. They cannot make a contract for the disposition of property belonging to either or both of them, if such contract would be a fraud upon the creditors of either of them. In the absence of creditors the husband may sell property to the wife, or the wife to the husband, or they may jointly dispose of their property in any way they choose, so long as they do not work an injury to their creditors.

At common law it was not possible for the husband to make a gift of his property to his wife. He could not even make her a present of her own earnings. By modern legislation, however, it is provided that the husband may give to the wife, or the wife to the husband, whatsoever property they choose, so long as they do not work an injury to creditors or to others to whom they may owe special obligations in reference to such property.

When the One May Be an Implied Agent of the Other. The wife will be regarded as the implied agent of her husband only with reference to the purchase of such household articles as are generally necessary for the support of the family. All purchases of groceries or household furniture for the use of the family may be made by the wife, and her

authority from her husband will be implied, and he will be liable for such obligations. The wife, however, has no implied authority from the husband to sign a lease for the premises occupied by the family, or to issue notes, or to sign contracts affecting the business in which the husband is engaged, or in any other way to bind the husband except as to those matters that, in the general conduct of the family, are usually performed by the wife.

A broader agency on behalf of the husband is implied by law, and his right to make leases and contracts, and to create other obligations which will affect the joint property of husband and wife, is generally undisputed. But he has no right to make a contract to dispose of the wife's dower interest in real property or of her joint interest in personal property, without her consent.

Liability of the One for the Torts or Crimes of the Other. Carrying out the theory that the husband and wife are one, the common law made the husband responsible for his wife's torts, and sometimes for her crimes, the thought being that she could not commit a tort without in some way he was responsible for it. Today the husband may still be liable for the torts of his wife, depending altogether upon the circumstances of each particular case. If he is present and in any way participates in the tortious act, of course he is liable. Even if he is not present, but by his conduct directs or encourages her course, he may be liable. The husband is no longer liable for the crimes of his wife, unless these were committed under some form of coercion by him.

III.

SEVERING THE MARRIAGE RELATION.

It is always well to keep clearly in mind the distinction between annulment and divorce as remedies for legal separations. If the parties to the marriage were both duly qualified under the laws of the state where the marriage was performed, and no fraud, duress or coercion were exercised to induce the marriage contract, then the remedy for separation must be by divorce. If, on the other hand, either of the parties was under some legal disability whereby, under the law of the state, he or she was not capable of entering into the marriage relation, then the remedy should be a bill for annulment.

Annulment of Marriage.

It frequently happens that minors are married without the consent of their parents, contrary to the express provisions of the state. In such case annulment is always the proper remedy. It is not at all infrequent that at the time the marriage ceremony is performed one of the parties is incapable of entering into the contract because of intoxication or the use of some drug which renders him or her unable to understand the meaning of the act performed. In all such cases the proper remedy is by a bill to annul.

If one of the parties has been fraudulently induced, through false representations, to consent to the marriage contract and to enter into the marriage relation, or if he or she has been coerced, even if such

coercion proceeds from the parents of either of the parties, or if by threat or intimidation (such as would amount to a legal duress) the marriage has been induced, a court of equity will declare the marriage void.

The Procedure for Annulment. The remedy to restore the status quo of parties who have been illegally married is by a bill in equity for an annulment of the marriage. The question frequently arises as to whether a marriage that is void under the statute should be so annulled. It is the general rule that if the marriage is one which by law is declared to be void, as where one of the parties is already legally married, it is not necessary that further proceeding be taken to annul the marriage.

In states where certain physical ailments or diseases are declared to be a bar to entering into the marriage relation, the proper remedy to dissolve a marriage entered into contrary to the provisions of such statute is by a bill in equity for annulment. In such cases, however, it is always necessary to show that the physical or mental condition existed prior to the marriage. If these conditions arose after the marriage they cannot affect its validity. Where a marriage has been entered into between parties of a blood relationship prohibited by the statutes of the state, such marriage is void and no act is necessary in order to separate the parties, or to allow either of them to enter into new marriage relations.

The Right of Annulment Is Not Dependent on Statute. The courts of chancery, without any express statutory provision, have original power to decree

an annulment of marriage, under a proper proceeding brought for that purpose. The right to have the marriage annulled accrues as soon as the injured party discovers the ground for such annulment, and generally continues, without being barred by the Statute of Limitations, until one of the parties to the marriage dies, unless otherwise dissolved by the court.

Generally, where a right to annul a marriage accrues because of some physical or mental disability, the court has the power to direct a physical or mental examination of the party complained against, and it is the duty of such party to submit himself to a proper examination, under the direction of the court, in order to determine whether or not ground exists for such annulment. This is particularly true where the charge is impotency, or an incurable disease contracted before marriage.

Separate Maintenance.

It is not always easy to determine when a wife is entitled to maintain a suit for separate maintenance. In general, such a proceeding is not brought for the purpose of determining the status of the parties, but merely for the recovery of money for the support and maintenance of the wife apart from her husband. It is generally requisite before such an action can be maintained that the wife should, at the time the proceeding is begun, be living separate and apart from her husband without her fault. The phrase "without her fault" is often hard of interpretation, for no two cases arising will be exactly alike. In many instances the wife will be found to have left the hus-

band for what appeared to her to be good cause, and what may appear to the court to be good cause, but which, under a long line of precedents, may not be sufficient legal ground for such separation.

If the wife has refused to accompany her husband to a new domicile, even though such refusal may seem at the time to have been justified, she will not be able to maintain an action for separate maintenance, he having the legal right to choose such domicile. If she has left him because he has made statements reflecting upon her virtue, or because he has been exceedingly disagreeable, if his conduct in this regard does not amount to what is usually termed cruelty, she will not be able to maintain an action for separate maintenance. If, after a separation has occurred, the husband invites the wife to return to him, and she does so in good faith, believing in his promises to change his course of conduct, and it later develops that his conduct has not changed, her return to him will not be held to have condoned the offense on account of which the separation originally occurred. The causes for which separations may occur and suits for separate maintenance be maintained must generally be of a character as grave as those for which divorce may be granted.

Divorce.

Wherever marriage has been recognized as an institution, there has been found some definite regulation in reference to divorce. Among the early Jews all that was necessary in order that the husband might divorce his wife was for him to give her a written

bill of divorcement and send her away. Among the early Greeks there were many divorces, and but very few barriers were placed in the way of securing legal discontinuance of the marriage relation. In Rome, during the earlier periods, family ties were much more closely guarded than among the Greeks; so far as the records disclose, no divorces were granted in Rome for a period of over five hundred years; but shortly following the time of the Caesars, divorces became much more frequent, and either husband or wife might secure a divorce for causes which would be regarded today as exceedingly trivial. In France under the rule of Napoleon, marriage was established as a civil contract; divorces were allowed for several causes, and became more or less frequent, until the beginning of the nineteenth century, when a legal divorce was very difficult of attainment.

In the early history of the American colonies few divorces were granted. It is said that no divorces were granted in New York for a period of one hundred years preceding the Revolutionary War, while in Pennsylvania divorces were recognized as a method of securing a legal separation, from the first organization of the colony.

Legal Grounds for Divorce. The greatest embarrassment of the United States touching her divorce laws is their lack of uniformity. In no two states are the grounds for divorce exactly the same. The result is that people who are unable to secure divorce in one state may move temporarily into another state where divorce laws are more liberal, in order to obtain a legal separation. The most generally accepted

grounds for divorce in the United States are adultery, habitual drunkenness, continued and repeated cruelty, desertion, generally for a period of two years, conviction of a felony, and impotency. To these general causes must be added others, such as insanity, recognized in some of the states. As a general rule insanity arising after marriage is not a ground for divorce. This is true in Illinois, Indiana, Iowa, Kansas and Kentucky, although several other states give full recognition to this as a legal ground for permanent separation.

Non-support is a ground for divorce in some states, but is not generally held sufficient unless accompanied with one or more of the other recognized causes for divorce. In every application for divorce it is necessary to base the action upon one or more of the causes prescribed in the particular jurisdiction in which the proceeding is brought. Otherwise the action must fail.

Unlike an action for separate maintenance, a divorce proceeding is intended to fix the status of the parties in their relation to each other. While the court in such proceeding will decree, in a proper case, the payment of alimony, yet such payment is incidental to the main purpose of the suit, and is intended only to give proper support to the wife who has been found by the court to be without fault.

In all actions for divorce where there are children in the family, the court will direct to which one of the parties the custody of the children will be committed. While the husband generally has the first right to the custody of the children, the court is at

liberty to grant the custody of such children to whichever parent may seem the best fitted to look after their care and education.

Divorce as an Institution. Frequently assaults are made against divorce as an institution, and it is urged that the state, by enlarging its grounds for divorce, assists in destroying the sanctity of the home, and increases the already large number of orphans created by such legal separations. There is a good deal of misapprehension upon this subject. In the great majority of cases the children are not made orphans by the divorce of their parents, but were orphans long before the divorce proceedings were instituted.

In the centuries immediately preceding the middle ages but few divorces were granted in Europe. The result was the separation, without sanction of law, of a very large number of people who refused for some reason to live together. One of the fundamental demands of the Reformation, as laid down by Martin Luther, was that the state be given the right to determine when divorce should be granted. Ever since his day there has been a gradual increase in the number of divorces throughout the civilized world. From 1887 to 1906, 945,625 divorces were granted in the United States, an average of 47,281 annually. The average number of divorces granted annually in the whole of Europe during that time was 30,796. In 1906, the last year for which reliable statistics have been collected, 72,062 divorces were granted in this country. Out of the total divorces granted covering this period 567,941 were granted in families where there were no children, and in 256,318 cases the par-

ties were separated within less than one year after their marriage.

The Cause of Divorce. In considering the divorce problem one must be careful to distinguish the cause from the effect. The cause for the separation of the family is not the divorce, but the efficient cause is always the conditions which made divorce necessary. The following were the causes for divorces granted in the United States covering the period from 1887 to 1906:

Desertion of wife by husband	211,219
Desertion of husband by wife	156,283
Cruelty of husband to wife	173,047
Cruelty of wife to husband	33,178
Adultery of husband	62,869
Adultery of wife	90,890
Intemperance of husband	167,211
Intemperance of wife	17,368
Non-support of wife by husband	34,664
Non-support of husband by wife	6

It is also interesting to note that the largest number of divorces are granted in rural rather than in urban communities. In the Western states, where there are but few large cities, many more divorces are granted, in proportion to the population, than in the big centers of population in the Eastern and Middle states. This may be explained, in part, by the more liberal divorce laws in these Western states, and by the further fact that many persons from the East have gone to the Western states in order to secure temporary residence sufficient to obtain a legal de-

cree. This, however, is not a satisfactory explanation of the facts that more divorces are granted in the state of Washington, in proportion to its population, than in any other state, the second in rank being Montana, third Colorado, fourth Arkansas, fifth Oregon, sixth Wyoming, while Illinois is twenty-third and New York is forty-seventh. Apparently the states which have the lowest percentage of illiteracy have the highest percentage of divorces.

IV.

WIFE AND CHILD ABANDONMENT.

Under the common law there was no penalty imposed upon the husband for the abandonment of his wife. Gradually, the several states have enacted laws making it a criminal offense for a husband to abandon and desert his wife willfully, and making the penalty a fine or imprisonment, or often both.

Generally, actions for wife abandonment are brought in the name of the People of the State, and are prosecuted in the same manner as all other misdemeanors. In states where prosecutions for misdemeanors are carried on by indictment, it is necessary that an indictment should be returned by a grand jury before the husband may be arraigned upon the charge of wife abandonment. In twenty-four out of the forty-eight states, however, all prosecutions for misdemeanors may be carried on today by information, and it is not necessary that a grand jury be called in order that a proper presentation of the charge may be made to the court.

Where wife abandonment is in itself a criminal offense, it is only necessary, in order to secure a conviction of a husband for wife abandonment, that the state prove he willfully abandoned and deserted his wife without just cause. In most of the states, however, including Illinois, the criminal statute of wife abandonment is linked with non-support, and before a husband can be convicted of the offense it must be shown not only that he willfully abandoned his wife without just cause, but that he failed to provide properly for her support and maintenance, People v. Bos, 162 Ill. App. 454. It has been held that it is no excuse for the husband to say that the necessities had been furnished his family by friends, State v. Waller, 90 Kan. 829, 136 Pac. 215.

Is Abandonment a Continuing Offense?

Much discussion has arisen in several jurisdictions as to whether wife abandonment is a continuing offense, but in order to determine this it is necessary to construe the particular statute under which the charge is made. In New Jersey it has been held that wife abandonment is a continuing offense, even though the statute there provides that the offense consists in willfully abandoning and neglecting to support the wife, Clifford v. Overseer of the Poor, 37 N. J. Law 152. Likewise, in New York, People ex rel. v. Duffin, 125 N. Y. Supp. 71, it is held that wife abandonment coupled with non-support is a continuing offense, and that a conviction for one offense is no bar to a second conviction, even though the hus-

band may not have returned to the wife after the first conviction and sentence.

According to a recent decision of the Supreme Court of Illinois, People v. Heise, 257 Ill. 443, 100 N. E. 1000, it is held that, under the statute of that state on wife abandonment, there cannot be a second conviction unless the convicted husband, after the first conviction, returns to the family, and again deserts it. Under this statute, abandonment and failure to support are coupled with the conjunction "and," making the two one offense, while in the New York statute abandonment and failure to support are joined with the conjunction "or," so that in the latter state a criminal action may lie for either of the offenses, and a new offense will be held to have arisen whenever the husband fails or refuses to support the wife, notwithstanding previous convictions.

Effect of the Wife's Leaving.

The most difficult question arises, in the consideration of cases involving wife abandonment, where the wife has left the husband because of some act of his which she deems sufficient to justify her conduct. Some states have held that a criminal action for wife abandonment will never lie where the wife has left the home, the husband remaining. The general rule, however, in the United States is that the action for wife abandonment may still be maintained where the wife has left the home, if her leaving was under justifiable circumstances.

What circumstances will justify a wife leaving her home, and still permit her to call into action the power

of the state to arrest and prosecute her husband and compel him to contribute to her support, is difficult of determination. If the conduct of the husband has been brutal and such as might imperil her life, or cause her bodily injury, or make her living with him intolerable, the courts will justify her, and a suit for wife abandonment may be maintained. But generally conduct on his part which may be exceedingly objectionable, such as the use of foul language, accusations of unchastity, penuriousness, etc., will not be sufficient to justify the abandonment of the home by the wife, and to render the husband guilty of the criminal offense.

Punishment of the Offender.

Nearly all statutes touching the subject of wife abandonment provide for a prison sentence, but give to the court an option to place the offender upon probation for a period of time with or without bond, conditioned upon his contributing during such time to the proper support and maintenance of the family. What is a proper allowance under such acts is generally a matter to be determined by the sound discretion of the court, and is not subject to review by a court of appeal. The rule usually followed by courts under circumstances of this kind is, that if there are no children the wife should be awarded one-third of the income of the husband; and if there are children and they remain with the wife, she should receive as much as is possible under all the circumstances, for the husband upon probation to pay, leaving always to him sufficient means to feed and clothe

himself properly, in order to conduct the business in which he is engaged.

V.

COURTS OF DOMESTIC RELATIONS.

In the last few years several Courts of Domestic Relations have been established in the United States. First among these was the Chicago court, which is a branch of the Municipal Court of that city. The purpose of the Court of Domestic Relations is to bring together into one central place all that class of cases which have to do directly with the family relations. It was considered by the organizers of the court that by bringing all these cases together they could be handled with much more expedition, better records could be kept, and a closer watch maintained on the families involved, than by having the cases scattered through a large number of courts.

How These Courts Do Business.

Chief among the cases brought into these courts are those involving wife and child abandonment. The first aim of the court in dealing with these cases is to restore, if possible, the divided family. To that end, when husband and wife are brought together in the court, an effort is always made to induce them to forget their differences and to re-establish the home. This effort has been more or less successful, and a great many warring parents have been induced, through considerations for the children, to try again to build up and maintain a proper family relation.

Divorce courts have for their purpose the legal separation of the family, but these Courts of Domestic Relations are unique, in that they are the only courts whose purpose is to maintain the integrity of the home and re-establish it when it has been broken up. It most frequently occurs in cases of wife abandonment that the cause for the separation is trivial. Misunderstandings arise which may not be easily corrected by the parties themselves. Mediation is necessary, and both parties are often found to be ready to accept the mediation of the court, to return, and in a measure forget their differences for the general good of the family and the community.

The primary aim is not punishment, and very seldom is the husband who is found guilty of wife abandonment, sentenced to prison without being given an opportunity, if he will, to return to his work, under proper bond or under probation, with a pledge to contribute regularly a certain sum for the support and maintenance of his family. The question of punishment for the wrong done by abandoning the family is never considered. The aim of the state is always to do that which appears to be best both for the family and the state.

It often happens, however, that men convicted and given an opportunity to support their families while upon parole, will break the parole and pay little attention to the orders of the court. Many such are rearrested from time to time and often committed to the workhouse for short periods, not for the purpose of punishment, but for the purpose of instilling in them a wholesome regard for the law and for their

obligations to their families. It frequently happens that such persons are paroled several times after a single conviction.

Handling Delinquent Cases. Another large class of cases brought into the Court of Domestic Relations consists of persons charged with contributing to the dependency and delinquency of children. These cases generally arise where girls under legal age are taken to disorderly houses, or some other act done which would tend to make them delinquent. It often also occurs that parents, because of drunkenness and neglect, allow their children to grow up in idleness and ignorance and under conditions which will almost certainly result in their becoming delinquent. The court is able, by bringing all these cases together, to keep detailed records and more closely to supervise the children who are involved, and often to furnish proper homes for them.

Bastardy Proceedings. In these Courts of Domestic Relations are brought all actions which are intended to secure support and maintenance for bastard children. Under the laws of most of the states a bastardy proceeding is a civil action and partakes but little of the nature of a criminal cause. The purpose is to determine who is the father of the child, and when that determination is made, to require him to contribute a certain sum toward the support of the child. In Illinois the bastardy act prescribes the form of verdict and judgment to be used in such a proceeding.

By this form it is provided that if the jury shall find the defendant guilty, it must also find that such

child is a "bastard" child. This becomes a judicial record, always open to inspection. The brand of "bastard" is thus fixed to the child for life, though there seems to be no good reason why such a record should be made against an innocent child. Most of the statutes of the several states also provide that the father of the child, when determined, shall support it for a period of from five to ten years, and that the child shall take the name of the mother. Here again there seems to be no good reason why one who has been adjudged to be the father of the child should not support it as long as it needs support, or why the child should not take the name of its father, as in all other cases.

In bastardy proceedings much difficulty arises in applying the law to the particular facts of each case. Under the law, evidence of sexual relations which the prosecutrix had with other men, outside the period of gestation, is inadmissible, but no one can certainly determine, in any given case, what is the period of gestation. It therefore becomes a fact to be determined by the jury under certain broad limitations. The period of gestation is generally regarded as falling within from 272 to 282 days. Yet it is the common knowledge of physicians that the period may embrace from 212 to 308 days.

In some states the burden of supporting a bastard child may be imposed on two or more persons who have sustained sexual relations with the prosecutrix during the period of gestation. This seems to be a more equitable rule, but it is doubtful whether it tends to greater morality.

Child Labor Laws.

Courts of Domestic Relations are peculiarly fitted to administer the child labor laws. The progress of a state or nation may be often gauged by the care given to the children in training them for citizenship.

A century ago, substantially no restrictions were placed upon either the character of the work or the length of the working day for children who might be employed. In England the first child labor laws forbade children under the age of seven years to work at any gainful occupation. Such have been the changes wrought, due to a more humane view of life, that this age limit has been gradually raised both in Europe and in the United States, so that now it is unlawful to employ children at most occupations before they have reached the age of fourteen years, and in some states the age is placed at sixteen years. This change in attitude toward child labor has wrought a great economic change.

Under the old poor laws of England an allowance was made by the government to poor families, based upon the number of their children. The more children the greater was the allowance. Since children could then be employed in factories and workshops they possessed a great economic value, and large families were the rule. Gradually, however, as restrictions have been placed upon their employment, children have become an economic burden, and the number of large families therefore has correspondingly decreased.

While child labor laws are of great value and tend toward a better development of manhood and woman-

hood, yet they must be framed and administered with great wisdom, or they will discourage ambitious children whose parents need their early support, and will lead many to become indolent rather than industrious. While children must not be employed in situations where they will be subjected to long hours of strain, yet they should always be encouraged to form habits of industry by doing such tasks as will in no way endanger either their mental or physical well-being. Cases involving a breach of the child labor laws are usually those where some employer has been arrested, and brought before the court, charged with employing a child under the legal age.

In nearly every case both the child and its parents appear in court to plead for the discharge of the defendant, and it is often found the defendant, instead of being a willful violator of the law, has but yielded to the earnest entreaties of a mother or father to employ the child, in order that its wages may aid the family in securing many needed things for the household.

Wide Discretionary Jurisdiction in a Number of Matters. Among many other cases brought into Courts of Domestic Relations are those having reference to the enforcement of the compulsory education laws and those forbidding the employment of women for more than a fixed time during any one day. These courts are largely administrative in their function, and never before have judges exercised such wide powers as in this new effort to define and regulate the relations of the various members of the family toward each other and toward the public.

VI.

JUVENILE COURTS.

Nowhere else has the progress of a people been more clearly demonstrated than in the establishment of juvenile courts. Within the last twenty years nearly every state has created one or more of these courts, whose purpose is to deal with the offenses of children and to provide for the suitable care and training of dependent and delinquent children.

In Illinois it is provided that every county having a population of 500,000 or over shall establish and maintain a separate Juvenile Court. Generally, dependent, neglected and delinquent children brought into these courts must, if male, be under the age of seventeen years, and if female, under the age of eighteen years.

Any reputable person in the county may file with the court a petition in writing, setting forth that a certain child is dependent, neglected or delinquent, and the court may then, upon examination of the petition, direct that process be issued to bring such child and its parents, or its guardians, before the court. If upon the hearing the child is found to be dependent or delinquent, the court will direct what disposition be made of it. The court has full power to grant probation and release the offender upon promise of better behavior, or to commit him to an institution. The court may also, if it deem proper, remand the child to the criminal courts, to be there tried as any other accused person. In the trial of these cases the laws

generally provide for a jury of six men, but in the actual practice a jury is seldom called upon to decide the issue.

The establishment of these courts has entirely changed the attitude of the state toward this class of offenders. Instead of avenging itself because of a violation of its most sacred laws, the state acts upon the broadest principles of paternalism, and seeks only to do that which will be best for the child and for the social well-being of all the citizens of the state.